



## U. S. Department of Justice

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Washington, D.C. 20530

April 11, 1996

By Fax

Robert Caplan  
Associate Regional Counsel  
Environmental Protection Agency, Region IV  
345 Courtland Street  
Atlanta, Georgia 30365

Re: United States v. Hardy, et al, No. C90-0695-L(J)

Dear Bob:

I am writing to clarify what happened the other day on the question of the draft consent decree that was faxed to Mark Feather. As you recall, Mark told us in a conference call that he was faxing changes to the consent decree to me and asked me to make the changes and fax the revised draft to you for your review. We then proceeded to discuss the main issue of judgment versus covenant not to sue, but by the end of the day we were still at an impasse, and we had to report to the court the next day whether we had settled. I discussed the matter with Walker that night and we came up with a possible compromise involving entry of judgment. I called Mark Feather and asked him if the compromise might be acceptable to Mr. Hardy, and he said he did not think that it would. I also told Mark that EPA had not commented on the idea and could reject it as well. The next day I faxed out the draft with Feather's proposed changes (nothing was agreed to), and I also included the compromise language on the judgment in the draft for everyone to look at. It was made clear to Feather that this was not an EPA offer and that it was simply to facilitate the negotiations. In fact, I also made clear to Feather that Steve Silverman had not had a chance to review the consent decree and might make changes after reviewing it.

Certainly before a draft consent decree is sent out as a DOJ/EPA offer, ORC must review it and approve it, but this was simply a working draft that could more accurately be characterized as Feather's draft with an additional idea for discussion suggested by me. If I had known that this would upset you, I certainly would not have done it. I am sorry that this angered you and I apologize for the incident. I am glad,

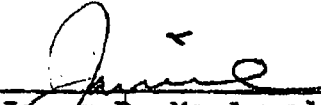


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however, that the compromise language was acceptable to both sides.

Thank you for all your zealous advocacy in the case. I personally think that with our combined efforts we have achieved a very good result under less than ideal circumstances. I hope that you agree.

Sincerely,



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James R. MacAyeal  
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cc: Mary Wilkes  
Steve Silverman